80-738

RECEIVED
NOV 12 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NOV 14 PAGE 14

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. A-1134

PENNHURST STATE SCHOOL AND HOSPITAL, et al.,	:	
Petitioners	:	
v.	:	
TERRI LEE HALDERMAN, et al.	:	NOS. 79-1404
	:	79-1408
and	:	79-1414
	:	79-1415
PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.	:	79-1489
	:	

and

UNITED STATES OF AMERICA

Respondents

Response of PARC et al In Opposition To Motion
Of Pennhurst Association For Accelerated
Consideration of Petition For Mandamus and Prohibition
And Cross-Motion of PARC et al To Vacate The Partial Stay

THOMAS K. GILHOOL
FRANK J. LASKI

PUBLIC INTEREST LAW CENTER
OF PHILADELPHIA

1315 Walnut Street, Suite 1600
Philadelphia, Pennsylvania 19107
(215) 735-7200

Counsel for Respondents and
Cross-Petitioners PARC et al.

TABLE OF CONTENTS

Page

ARGUMENT .....

I. The Pennhurst Association and Commonwealth's Petition for Extraordinary Writ Does Not Lie Here Nor Is It Ripe Because They Have, And Have Pursued, Alternative Legal Remedies 4

II. The District Courts' Implementation of The Partial Stay Is Fully Consonant With The June 30, 1980 Order of This Court..... 6

III. The Further Encompassing Stay Sought By The Commonwealth and the Pennhurst Association Would Leave Transfer of Pennhurst Residents To Be Transferred To Community Living Arrangements Without The Protections The Trial Record, Findings of Court and Continuing Experience Shows To Be Necessary To Avoid Dumping and Their Irreparable Harm..... 10

IV. Cross-Motion of Respondents' PARC et al To Vacate The Partial Stay..... 17

EXHIBITS

A. Certified Docket, U.S. Court of Appeals for The Third Circuit, Case No. 80-2341

B. Letters transmitting exceptions in G.W. and P.T. hearings.

C. Response of the Pennsylvania Association For Retarded Citizens, et al., To Application For Stay.

D. Commonwealth Defendants' Brief Regarding Implementation of Stay.

E. Letter of Jennifer Howse of August 19, 1980.

F. Letter of Jennifer Howse of October 8, 1980.

G. Cost Comparisons for Pennsylvania Mental Retardation Institutions, from Office of Mental Retardation Five Year Plan.

H. Primary Mental Retardation Community Services Allocations for FY 1980-81.

I. Pennhurst Study: Brief Report #1. "Developments of Seventeen Former Pennhurst Residents Who Are Now In Community Living Arrangements in Montgomery County."

TABLE OF AUTHORITIES

Cases	Page
Deen v. Hickman, 358 U.S. 57 (1958)	1
Kerr v. United States District Court for the Northern District of California , 426, U.S. 402 (1976)	5
Snider v. All State Administrators, Inc., 414, U.S. 771 (1974)	2

Miscellaneous:

Stern & Gressman, Supreme Court Practice, 5th Ed. 1978	1, 2

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. A-1134

PENNHURST STATE SCHOOL AND HOSPITAL, et al.,		
Petitioners	NOS.	79-1404, 79-1408, 79-1414, 79-1415, 79-1489
v.		
TERRI LEE HALDERMAN, et al.,		
UNITED STATES OF AMERICA, and		
PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.,		
Respondents		

Response of PARC et al In Opposition To Motion Of Pennhurst Association For Accelerated Consideration Of Petition For Mandamus and Prohibition * And Cross-Motion of PARC et al To Vacate The Partial Stay

The Pennsylvania Association for Retarded Citizens and four individual retarded people by their next friend and relative, who are representatives of the class of plaintiffs below, respondents in Nos. 79-1404, 79-1408, 79-1415 and 79-1489, and cross petitioners

* Contrary to Rule 33(1) of the Court, the Pennhurst Association has not filed a Motion for Leave to File a Petition for Writ, but has filed a petition itself. On that ground alone, the petition should be dismissed. Stern & Gressman, Supreme Court Practice 647-48 (5th ed. 1978). And see Deen v. Hickman, 358 U.S. 57 (1958); Stern & Gressman at 632.

[Footnote Continues]

in No. 79-1414 now pending argument before the Court, briefs of all parties on ther merits having been submitted, oppose the Motion for Accelerated Consideration of a Petition for Writ of Mandamus and Prohibition, on the following grounds:

1. The matters as to which petitioners seek an Extraordinary Writ from this Court are pending before the district court upon exceptions and before the Court of Appeals upon appeal having been brought to those proper forums by petitioners Pennhurst Association and Commowealth themselves and where the full record and not the selective portions advanced here by petitioners are before the Court; thus a Extraordinary Writ does not lie here at all let alone a need for accelerated consideration. A certified copy of the docket entries in the Commonwealth's appeal from the district court's Order of July 14, 1980 is attached as Exhibit "A"; copies of letters transmitting the Pennhurst Association's exceptions to the district court from the decisions in G.W. and P.T. are attached as Exhibit "B".

2. The district court's implementation of the partial stay is entirely consonant with the June 30, 1980 Order of this Court; petitioners claims to the contrary are based upon a misreading of the

---

Further, Snider v. All State Administrators, Inc., 414 U.S. 771 (1974), announces that Motions for Leave and Petitions for Writ will not be accepted for filing unless printed, except in in forma pauperis circumstances and then the in forma pauperis motion will be acted upon before a Petition for Writ can be filed, Stern & Gressman at 647.

No showing of in forma pauperis status is attempted in the Pennhurst Association's Motion to Dispense with Printing. The only reason adduced there for failure to print is that printing would "unduly delay this Court's resolution of this Matter." The time of filing is and has been entirely in the control of the Pennhurst Association and the Commonwealth, who could have filed a Motion for Leave to File a Petition for Writ in this Court at least any time since October 15, 1980 (the date of the objected to determination in re G.W.) or October 8, 1980 (the date, in re P.T.), including October 20 and October 27 the dates upon which counsel for the Pennhurst Association did file exceptions in the district court from the G.W. and P.T. determinations.

stay papers which were before the Court when it granted a partial stay and "in all other respects...denied" the original stay request.

3. Pennhurst Association and Commonwealth Petitioners' application in the alternative for a further and augmented stay--which would in effect reopen and reverse the Court's decision to refuse the blanket stay sought originally from this Court--is based upon misrepresentations as to the facts below and would, if granted, leave plaintiffs without protections both courts below and this Court have found necessary to avoid irreparable harm to plaintiffs pending ultimate decision by this Court of the case in chief, in that:

(a) Commonwealth intends to move the rest of the school-age children and 65 adults now at Pennhurst within the 1980-81 fiscal year;

(b) Commonwealth defendants resistance to the orders of the court below show they would move such plaintiffs without regard for parental participation, without mediation of parental concerns, without training and monitoring of community programs, without formulation of individual program plans in accord with professional standards, without regard to whether programs are appropriate or not and with no opportunity, provided now by presence of court orders and masters for the counties or plaintiffs, to hold the Commonwealth to professional standards;*

4. Rather than grant the further all-encompassing further stay sought by petitioners Pennhurst Association and Commonwealth, the Court should grant the Cross Motion of PARC et al to Vacate the Partial Stay, on grounds that:

(a) the district court and the Court of Appeals en banc, unanimously, have heretofore denied in their entirety stays of the orders below;

---

* The five defendant counties have generally cooperated in the implementation of the Hearing Master's determinations below and have not joined in the Petition for Writ or in the Alternative for Modification of Stay.

(b) The merits of the underlying case have now been fully briefed in this Court and it becomes clear that respondents will likely prevail;

(c) Continued subjection of any member of plaintiff class to conditions of Pennhurst for any reason continues to visit upon them risk and actuality of injury (35a) and regression (20a) and medical abuse and to deprive them of opportunities for growth presented by community living arrangements.

In support of their response PARC et al say in particular as follows:

I. The Pennhurst Association and Commonwealth's Petition for Extraordinary Writ Does Not Lie Here Nor Is It Ripe Because They Have, And Have Pursued, Alternative Legal Remedies

1. The matters concerning particular individuals, G.W. and P.T., of which the Pennhurst Association complains are pending before the district court, the Honorable Raymond J. Broderick, having been put before the district court by counsel for the very Pennhurst Association on October 27, 1980 and October 20, 1980, respectively, pursuant to the procedures established by the district court for exceptions to determinations by the hearing master. See letters transmitting exceptions, appended as Exhibit "B". The record of those hearings is before the district court, but has not been placed before this Court. During the pendency of these exceptions G.W. and P.T. remain at Pennhurst.*

* Of the 20 hearings held and the 19 determinations made by the Hearing Master since the district court's July 14, 1980 Orders (not 17 determinations as incorrectly stated in the Petition at(p. 5 and in Pennhurst Association counsel's Affidavit), exceptions have been filed on behalf of parents or retarded persons only in G.W. and P.T. In the 17 other instances the retarded person and his nearest relative agreed that movement from Pennhurst to the community initiated by the Commonwealth was proper and desired in the retarded person's interest.

2. The Commonwealth of Pennsylvania, the party primarily interested in the effort to secure from this Court a further more encompassing stay, denied by the Court on June 30, 1980, which would dissolve the protections established by the district court for the benefit of plaintiff retarded people (See Commonwealth's Memorandum of Law in Support of Petition for Writ of Mandamus and Prohibition or, in the Alternative, for Modification of Stay, dated October 31, 1980), has by its appeal of the district court Order of July 14, 1980, filed September 23, 1980, placed all matters concerning that order before the Court of Appeals for the Third Circuit where they are now pending on the full record of the proceedings in the district court no part of which has been put before this Court by petitioners. See certified copy of docket entries in Appeal No. 80-2341, appended as Exhibit "A".*

3. Petitioners here thus have other remedies at law; they have in fact invoked those remedies; those proceedings are pending before the district court and the Court of Appeals; the interests petitioners assert here are fully protected in those proceedings. In these circumstances, no extraordinary writ lies, nor should a writ issue, nor and, had petitioners requested leave to file a petition for extraordinary writ, should such leave issue. Kerr v. United States District Court for the Northern District of California, 426 U.S. 402, 403 (1976). There is no reason for accelerated consideration of Petitioners' Extraordinary Writ.

---

* On October 31, 1980, the Commonwealth purported to file in the Court of Appeals a motion to extend time for breifing its appeal until ten days after this Court should rule upon the then not-yet-filed Pennhurst Association's Petition for Extraordinary Writ. The Commonwealth motion has not been docketted or acted upon by the Court of Appeals.

II. The District Court's Implementation of The Partial Stay Is Fully Consonant With The June 30, 1980 Order of this Court

4. On June 30, 1980, this Court entered the following Order:

> "Petitioners' motion for a stay of the judgment of the Court of Appeals pending final disposition of the cases in this Court, is granted to the extent that the judgment mandates the movement of residents of the Pennhurst facility to 'appropriate community living arrangements.' In all other respects, the motion is denied. Mr. Justice Brennan, Mr. Justice Marshall, Mr. Justice Blackman and Mr. Justice Powell would deny the motion." 100 S. Ct. 3046 (1980).

5. In its Opinion concerning its Order of July 14, 1980 implementing this Court's partial stay, the district court, the Honorable Raymond J. Broderick, wrote:

> "the Supreme Court granted a stay of the judgment of the Court of Appeals only "to the extent that the judgment mandates the movement of residents of the Pennhurst facility to 'appropriate community living arrangements.'" We understand the word "mandate" to have its literal meaning -- that this Court cannot mandate the movement of residents from Pennhurst to the community. Nothing in the Supreme Court stay order suggests, however, that voluntary transfers may not proceed, nor that this Court may not ensure that residents and their families make informed judgment as to such voluntary placements. Furthermore, we find nothing in the Supreme Court stay order to prevent this Court, with the assistance of its Special Master and Hearing Master, from ensuring that such voluntary transfers make adequate provision for the safety and habilitation of the retarded residents." Opinion of July 28, 1980, appended to Petition for Writ as Appendix B, pp. 4-5.

6. The district court's construction of the Court's partial stay order was correct, as clearly appears from what was before the Court upon the Pennhurst Association's original stay motion as follows:

(a) The Pennhurst Association's focal complaint in its original stay motion was: "Absent this Court's intervention, a substantial number of retarded individuals will be forced into com-

munity living arrangements that are not equipped to care for them before the case is resolved in the 1980 term." Memorandum of Pennhurst Association on Stay Motion, p. 13, reiterated in its Petition for Writ at p. 4 (emphasis supplied)

(b) In their original stay motion, Pennhurst Association sought but this Court apparently denied:

(i) a stay of paragraphs 1-11 of the Order of March 17, 1978, in their entirety (these orders require a supply of community services individual program plans formulated with parental participation, monitoring and training by defendants);

(ii) a stay of paragraphs 12-20 of the Order of March 17, 1978 (standards for the interim operation of Pennhurst) insofar as they require or depend on the Special Master;

(iii) a stay for the Order of March 5, 1979 (mechanisms for oversight of interim operation of Pennhurst and case management in community services) insofar as they require or depend on the Special Master;

(iv) a stay of the Order of June 8, 1979 in its entirety (requiring a supply of community services for all school-aged children at Pennhurst, monitoring and training by defendants and quarterly advanced allocations by state or counties)

(v) a stay of Section V of the April 24, 1980 Orders in its entirety (providing for the individual determinations required by the Court of Appeals)

(vi) a stay of all future orders of the district court insofar as they relate to the transfers of people from Pennhurst and/or to the utilization of the Special Master, including but not limited to the District Court's Proposed Order of May 20, 1980 (which would have required a supply of community services for 250 Pennhurst residents by June 30, 1981, including vocational, medical-dental, supportive services, monitoring and training).

(c) Instead, the Court by its orders of June 30, 1980 granted a partial stay of the orders below insofar as they mandate the transfers of people from Pennhurst.

(d) Respondents PARC et al and Halderman et al in their responses to Pennhurst Association original blanket stay motion had

placed before this Court the fact that Commonwealth defendants in all events intended to transfer some 300 people from Pennhurst to community living arrangements during fiscal years 1980-82 and that the protections of the district court's orders were in all events required to assure plaintiffs would not be harmed by Commonwealth in so doing. See Response of PARC et al to Application for Stay, pp. 4-5, filed in the Court June 24, 1980 and appended here as Exhibit "C". Apparently this fact, that the Commonwealth would be transferring Pennhurst residents to community living arrangements in all events, contributed to the Courts formulation of its partial stay prohibiting court-mandated-movement, but letting the protections of the district court orders stand.

7. Following this Court's June 30, 1980 partial stay, the Commonwealth argued to the district court that all orders of the district court in any way related to community living arrangements and other community services had been stayed and the Commonwealth could proceed in untramelled fashion to place Pennhurst residents in the community, as and how it wished, despite the trial record of ten years derelictions by defendants found by the district court and the Court of Appeals en banc. The Commonwealth argued:

> "The Supreme Court acted broadly to enjoin the Court's control and supervision, pending final disposition, over the process of deinstitutionalization."
>
> "In short, the stay is directly, squarely and broadly aimed at this Court's authority to mandate and control the process of community placement. The Court may neither direct placement nor control its form and process. The only portions of the April 24, 1980 [previously denoninated March 17, 1978 and March 5, 1979 Orders] surviving the stay are:
>
> a. Part I [i.e. March 17, 1978 Orders] paragraphs 11-19 regarding Pennhurst, paragraphs 5,7-8, regrading the Master insofar as related to Pennhurst activities and paragraph 20; and

b. Part II,[March 5, 1979 Order], paragraphs 1.0 - 6.0.*

"This does not mean the placement process will grind to a halt....Rather it will move ahead under the [sole] jurisdiction of Commonwealth and county officials." Commonwealth Defendants Brief Regarding Implementation of Stay at 1,3, appended as Exhibit "D" (brackets and emphasis supplied).**

Plainly, given the reach of the original blanket stay motion, the Court's grant of only a partial stay "to the extent that the judgment mandates the movement of residents of the Pennhurst facility to 'appropriate community living arrangements'", and the Court's denial of the blanket stay motion "in all other respects" the construction of the Court's stay which the Commonwealth urged upon the district court was incorrect. Conversely the district court's interpretation and its implementation of the stay is correct and faithful.*** Yet the Commonwealth again seeks by the Pennhurst Association's Petition for Writ or in the Alternative for Modification of Stay to secure exactly the stay this Court has once denied.

---

* These Orders relate to in-institution protections.

** The Pennhurst Association now adopts this position of the Commonwealth, see their Petition p. 13 n. 9, and urges that the Commonwealth remains free to transfer Pennhurst residents if, and howsoever, in the Commonwealth's independent view, it considers transfer to be appropriate--a position which reveals the interest represented by the Pennhurst Association Parent-Staff to be rather more a staff or union interest rather than any parental interest. Only the district court Orders (para,2) assure a parental role in the formulation of program plans for retarded people; the record shows parents had been uniformly excluded from participation in planning and placement decision (446 F. Supp. at 1313, Joint Appendix 740a 697a). See also October 1, 1980 Master's Report, Table XI at p.23 showing 61.5% participation by family members in program planning under the Court's oversight as against 11.3% participation previously.

*** Pennhurst Association's assertion (Petion for Writ at p. 10 n6) that the district court in its Opinion in chief in this case had "expressed the view that, due to mental disabilities of many Pennhurst residents, 'the notion of voluntariness in connection with admission as well as in connection with the right to leave Pennhurst is an illusory concept'" is a corruption of what in fact the district court said. The district court's opinion shows, 446 F. Supp. at 1311, 59a - that the court found "voluntariness" an illusory concept" not because of residents' disabilities but because the record in this case shows that Pennhurst residents had no practical alternative at the time of their admission and at the present time;they have no place else to go.

III. The Further Encompassing Stay sought by the Commonwealth and the Pennhurst Association would leave transfer of Pennhurst residents to be transferred to Community living arrangements without the protections, the trial record, findings of court and continuing experience shows to be necessary to avoid dumping and their irreparable harm.

8. Without regard to any Court order, the Commonwealth intends transfer 31 additional school-aged residents* of Pennhurst and 65 adult Pennhurst residents to community living arrangements between now and June 30, 1981. The Commonwealth's undertaking to transfer the rest of the school-aged residents and 65 additional adults is reflected in Commonwealth Allocations to Counties, August, 1980 and letters of August 19, 1980 and October 8, 1980 from Pennsylvania DPW Deputy Secretary Howse to County Administrators appended as

---

* When the Commonwealth sought a Stay of the school-aged order of June 8, 1979 from the Court of Appeals pending en banc argument, the Pennsylvania Department of Public Welfare Secretary announced the Commonwealth would, even without a court order, place the 65 school-age children in the community by September, 1979.

Today, despite this Commonwealth pledge and despite the continuing effect of the June 8 Order, requiring placement by September 1979 and its later amendment requiring placement by June 30, 1980, the Commonwealth has still not placed 31 of the school-aged children.

Exhibit "E" and Exhibit "F".*

---

* Deputy Secretary Howse's letter of August 19, 1980 recites:

> "As you are aware, I elected to cancel our meeting originally scheduled for July 17, 1980 in light of the issuance of new court orders on July 14, 1980. I would like to reschedule that meeting on Thursday, August 28, 1980 at 10:00 A.M. at the Philadelphia County MH/MR Office."
>
> "At that time, I will outline my recommended direction regarding placement of plaintiff class members."

The Deputy Secretary's statement in her Affidavit of October 31, submitted to the Court as Exhibit B of the Commonwealth's Memorandum of Law in Support of Petition for Writ of Mandamaus and Prohibition, that

> "Following receipt of the Supreme Court's Order of June 30, 1980, I moved promptly to reinstate Pennsylvania's community placement program outside the aegis of the District Court."
>
> "By letter of July 8, 1980, sent to mental retardation officials in Bucks, Chester, Delaware, Montgomery and Philadelphia counties, I organized a meeting for July 17 to plan those future placement activities. A true and correct copy of that letter is attached hereto as Exhibit 1."
>
> "Upon receipt of Judge Broderick's Order of July 14, 1980, stating that the District Court would continue to control the placement process, that meeting was cancelled."
>
> "If the petition for Writ of Mandamus and Prohibition is granted, I will reinstate those efforts."

The affidavit promise to "reinstate' their community placement efforts and Commonwealth's Memorandum here are but the most recent instance of Commonwealth defendants recurrent posturing throughtout this action. The Commonwealth's pattern throughtout and now has been to seek to avoid court orders by reciting their intention to do it on their own, but then to fail to do so (See, e.g., the findings 446 F. Supp. at 1311 and 1325; 48a and 78 a). When under court order, the Commonwealth has delayed and resisted (e.g., their non-performance under the Children's Order of June 8, 1979), incredibly attributing their non-performance to the court order itself. Upon each succeeding application for stay (compare application in re Children's Order, and their Brief Regarding Implementation of Stay, Exhibit "D", at pp.4-5) the Commonwealth again represents they will do it if only a stay is granted.

9. The district court's orders do not impose a "massive bureaucracy" upon defendants. Nor do those orders displace defendants; they nominate who shall be transferred, they develop the individual program plans, they invoke and assure parental participation, they design and develop the community programs, they determine their costs* See Orders of April 24, 1980, passim. The Master's role is oversight, a check to ascertain that defendants do these things and do them in accordance with professional standards. Judge Broderick's orders, and the Master's oversight, do not remove or transfer any responsibility of the state or counties, but rather sharpen and focus state and county responsibility and make clear and sure they are theirs, responsibilities long since assigned to them by state and federal statutes but as the trial record showed, responsiblities ignored, blunted, blurred and confused by county and state conduct through

---

* Commonwealth's effort through the affidavit of Michael Bennett (See Memorandum at p. 3) to attack collaterally the finding of the district court, in which the Court of Appeals concurred and which petitioners have not raised on certiorari, that community services are on the average less costly than Pennhurst misses the mark. The affidavit does not disclose that average per capita costs at Pennhurst are now $134.00 per person per day. See "Cost Comparisons", 1980-81, All Pennsylvania Retardation Institutions, in Commonwealth of Pennsylvania, Mental Retardation Facilities: Five Year Plan, Vol.I (March 1, 1980) appended hereto as Exhibit "G ". Nor does the affidavit disclose that the average cost of the 15 community placements which the affidavit purports to present does not factor what those costs will be upon full occupancy of those CLA programs. For example, G.C., one of the fifteen, is the only person now in a CLA designed and staffed for 3 persons. (See Hearing Decision in re G.C. August 21, 1980, at p. 2). When fully occupied, a decision within the authority of defendants, G.C.'s CLA would cost, not an average of $120.88 per person per day, but much less.

more than a decade and now.*

---

* Contrary to Deputy Secretary Howse's affidavit that the "District Court would continue to control the placement process" (para. 5), all orders of the Court put that process under the control of defendants. The Commonwealth's responsibilities as assigned in the April 24, 1980 Order of the district court in particular example are:

- to provide suitable community living arrangements for retarded residents of Pennhurst. I (1).
- to provide to each resident of Pennhurst a written individualized program plan and individualized habilitation program I (2).
- to provide monitoring mechanisms I (3).
- to provide continuing support and assistance to Pennhurst residents as they move into community programs II (7.1.1)
- to support case managers for Pennhurst residents II (7.1.2).
- to provide pre-service and in-service training for personnel providing community services for school-aged persons placed in the community IV (5).
- to provide program and fiscal monitoring mechanisms for all community programs established for Pennhurst residents of school age IV (10).
- to project costs of community services for Pennhurst residents of school age and make quarterly payments to the counties IV (12). (See e.g. Commonwealth allocations appended as Exhibit H).

The Special Master's role is limited to oversight (See e.g. IV. (5), for Master's "review and approval" of proposal for mandatory pre-service and inservice training"; IV. (8) Master's review of plans for non-residential services; IV. (10), Master's review and approval of Commonwealth monitoring plans.

The Commonwealth's assertion that current Court of Appeals ordered hearing mechanisms are "a substantial hindrance to Pennsylvania placement program" (Commonwealth Memo. p.2) is contrary to

[Footnote Continues]

10. Without the protections of the district court's order the record of trial and since shows plaintiffs will be subjected to great harm: both by being forced to remain at the institution and from improperly planned and implemented transfers to community living arrangements as follows:

(a) on the one hand, dependent soley upon defendants' continuingly "vague and indefinite schedule" (78 a), people are left at Pennhurst longer than they would choose to be there and suffer the continuing injury and regression of their skills which Pennhurst imposes.**

---

* [Footnote Continues]

Deputy Secretary Howse's testimony that,

> "We feel some discomfort in proceeding with the move of a client in the absence of at least having that check and balance of a a hearing process in the absence of a specific response from the parent." (Hearing March 6, 1980 Tr. 52).

** Forty people have died at Pennhurst since the Orders of March 17, 1980. A Report commissioned by the Special Master on these deaths by two physicians, filed with the district court on July 15,1978, concluded, for example:

> "In literally all of the records reviewed, of Pennhurst residents both living and deceased ..., documentation of the process of medical diagnosis and treatment is scandalously poor" (page 4)
>
> "In many instances, in the records of deceased residents..., signs of problems were present long enough before the terminal event, that if heeded and acted upon could prevent death or mitigate the threat of serious accident or disease" (page 3)
>
> "Viewed in terms of traditional medical care, Pennhurst residents do not receive periodic comprehensive assessment of their condition, their progress and their long and short term, medical needs. This leads, for example, to rote reordering of, and exposure to side effects of, drugs for which the original need has long since become obscure; inattentive seizure management; failure to evaluate life-threatening conditions which may be highly treatable; and failure to take effective action to eliminate known life-threatening behavior." (page 11).

A new medical director for Pennhurst appointed by the Commonwealth in late August, quit in Mid-September.

(b) On the other hand, transfer to community living arrangements without the court-ordered protections the Commonwealth and the Pennhurst Association now again seek to stay subjects Pennhurst residents to dumping, for example: being moved where openings are available without regard to whether the placement provides the structure and services required by the person, without consideration of parental insights and programming desires, without formulation or effectuation of individual program plans which secure the first two protections,without pre-services and in-service training of providers and without monitoring. See, e.g. the October 1, 1980 Master's Report p.11, lodged by Halderman et al. in their response herein (the first forty people to be moved from Pennhurst, after the Order of March 17, 1978 and before the Special Master was appointed, were moved without an individual program plan, despite paragraph 2 of the Order of the Court); Hearing Master Opinions in re J.S., E.M., S.P., and N.T. (noting, and correcting in the course of the review process, omissions by defendants in consultation and mediation with parents, in training, staffing, or monitoring, in arrangement of day program, medical or dental services).*

11. With the protections accorded by the outstanding orders of the district court to retarded people during their transfer the outstanding, protections which the Commonwealth and the Pennhurst Association now seek to stay entirely, the detriment of Pennhurst has been eliminated for those transferred and they have gained from properly planned community services, as follows:

---

* Such protections do not require a formal individual hearing as the Court of Appeals ordered, but may be realized by a Master's informal review of the state and county placement plans and processes, (until such time as those processes themselves may be relied upon) as the district courts original orders contemplated. See Brief of Respondents PARC et al (filed October 20, 1980), pp. 32-33 n.46.

(a) For example, the 17 people transfered from Pennhurst to community living arrangements in Montgomery County are no longer subject to the regression Pennhurst imposes (20a) and have instead learned and mastered significant new skills in their community living arrangement. These seventeen have gained 16.2 points on the average (on a base of 56.2 points) on a Behavior Development Survey Scale measuring skills in personal self-sufficiency, community self-sufficiency and personal-social responsibility. The Pennhurst Study: Brief Report #1 (October 16, 1980) (Conroy et al) (prepared under contract to the Secretary of HEW, in the course of a five year evaluation of Pennhurst implementation) is appended hereto as Exhibit "I". See also October 1, 1980 Master's Report at pp. 14-23 (reporting Individual Growth of the 122 people transferred under protection of the Court's Orders and the Affidavit of former Pennhurst residents now in CLAs and their parents appended to the response of Halderman et al. herein.

(b) Parental involvement both in program for their relative and in visitation and activities with their relative is dramatically increased in community living arrangements. See October 1, 1980 Master's Report pp. 20-23, lodged with the Court by Halderman et al. in their response herein. 61.5% of the parents or next closest relatives of retarded persons in the community have participated in planning the person's program; whereas only 11.3% had participated when the person was at Pennhurst. Table XI, p. 23. Forty-two percent have had family visits at least monthly in the CLAs, whereas only 14.2% had monthly visits from their family at Pennhurst. Forty-percent have visited or taken a trip with their family from the CLAs, whereas only 3.4% had done so from Pennhurst. Table X, p. 22. See also the affidavits of Pennhurst residents now in CLAs and thier parents appended to the response of Halderman et al herein.

(c) Under protection of the district court's orders the community programs provide the active services needed by the 122 retarded people transferred thus far (October 1, 1980 Master's Report, pp. 24-33); their residential and day programs are monitored by county case managers monthly (Table XIII, p.36); the community residents each have a doctor and a dentist (Table XII, p. 25).

IV. Cross-Motion of Respondents' PARC et al Vacate The Partial Stay

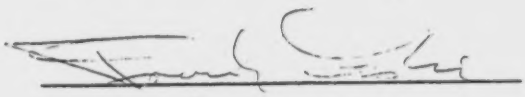
Respondents PARC et al respectfully move that the Court vacate the partial stay entered June 30, 1980, on the following grounds:

(a) The Courts below, including the Court of Appeals en banc, unanimously, on May 12, 1980 -- have denied stays in their entirety. This Court on October 1, 1979 unanimously denied a stay while the case was pending decision in the Court of Appeals. 100 S. Ct. 28 (1979).

(b) The merits of the questions as to which the Court granted certiorari in Nos. 79-1404, 79-1408, 79-1414, 79-1415 and 79-1489 have now been briefed by all parties and, respondents submit, it is now clear that petitioners are not likely to prevail on the merits.

(c) Continued injury and regression during any further time at Pennhurst for whatever reason and the deprivation to Pennhurst residents of the benefits of community living imposes upon Pennhurst residents a harm far outweighing any harm to defendants from a dissolution of the partial stay. See the Reproduction of U.S. Ex. 48, lodged with the Court and the briefs of all parties. If the partial stay is dissolved, the district court ordered protections during transfer, of course, would remain but the district

court would be free to order a reasonably-paced provisions of community living arrangements for those residents for whom they would have the benefit of such a reasonably-paced schedule rather than awaiting their place on the Commonwealth's "vague and indefinite schedule", 78 a, to transfer them to the community.



Thomas K. Gilhool
Frank J. Laski

PUBLIC INTEREST LAW CENTER OF
PHILADELPHIA

1315 Walnut Street, Suite 1600
Philadelphia, Pennsylvania 19107
(215) 735-7200

Counsel for Respondents and
Cross-Petitions PARC et al

November 12, 1980

Exhibit "A"

[illegible] 79-1628, 79-1630, 79-1842, 79-2092/3 & 80-1827

80-2341
"Commonwealth" Defendants Helen O'Bannon, et al

Form A. O. 147 (July 1963)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

APPEAL FROM	CASE NO.
EASTERN DISTRICT OF PENNSYLVANIA	80-2341

TITLE OF CASE	ATTORNEYS FOR APPELLANT
(SEE PRECEDING PAGE FOR COMPLETE CAPTION) TERRI LEE HALDERMAN, et al. vs. PENNHURST STATE SCHOOL & HOSPITAL, et al. "Commonwealth" Defendants, Helen O'Bannon, Jennifer Howse, George Kopchick, et al., Appellants.	Robert B. Hoffman - Member **ATTORNEYS FOR APPELLEE** Alexander Ewing, Jr. [U.S.A.] David Ferleger - Member [Terri Lee Halderman, et al.]

Old covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 1467, 79-1628, 79-1630, 79-1842, 79-2092/3, 80-1827&80-2341

NO. BELOW: D. C. Civil No. 74-01345

JUDGE BELOW: Raymond J. Broderick

DATE OF JUDGMENT:

NOTICE OF APPEAL FILED: August 13, 1980

Commenced in D.C. May 30, 1974

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
1980 Sept. 23	Appeal docketed in C.C.A. Clerk's fees pd in D.C.			

80-2341

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

THIRD CIRCUIT

CASE NO. 80-2341

DATE 1980	FILINGS—PROCEEDINGS	Filed
Sept. 23	Certified copy of Notice of Appeal received August 15, 1980, filed.	
	Record received May 1, 1978, filed. (Papers Nos. 36, 137/138, 245/260, 315, 378, 391/92, & 478/480 not included)(ENTIRE RECORD IN EXHIBIT ROOM - 5 boxes) (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092/3, 80-1827 & 80-2341)	
	First supplemental record (Docs, 481/489), received July 18, 1978, filed. (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Second supplemental record (Docs. 490/497, 503, 506/518), received November 17, 1978, filed. (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Third supplemental record (Docs. 519/535), received January 4, 1979, filed. (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Fourth supplemental record (Docs. 537, 541/43, 545, 547/48, 551/558, & 562/564), received April 5, 1979, filed. (Covers 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Fifth supplemental record (Docs. 560, 590/96, & 600/608), received June 13, 1979, filed. (Covers 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Sixth supplemental record (Docs. 561, 568, 571/72, 599, 611/13, 617, & 620/23), received July 11, 1979, filed. (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Seventh supplemental record (Docs. 478/9, 498/502, 504/5, 537, 541/46, 549/50, 559/70, 573/89, 594, 597/98, 605/6, 609/10, 618/19, 624/34, 636/642, 645/48, 650/54, 662, 664/68, 670/686, 688/690, 692/3, 695/704, 706/10, 712/19, 723/29, 733/35, 742/46, 748, 750/52, 757, 760,762, 771, 775, 777/78, 780/85), filed. (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
	Eighth supplemental record (Nos. 649, 655, 658, 711, 730, 732, 736, 738, 753, 756, 758/9, 763/6, 768, 770, 774, 791, 793/4, 796/807, 813/16, 818/20, 824/30, 833/37, 839/47, 849, 851, 853, 855/6, 858, 862/3, 865/68 & 870), filed. (Covers Nos. 78-1490, 78-1564, 78-1602, 78-1999, 79-1467, 79-1628, 79-1630, 79-1842, 79-2092, 79-2093, 80-1827 & 80-2341)	
Sept. 26	Appearance of Alexander Ewing, Jr., Esq., for appellee, United States of America, filed.	
Oct. 9	Appearance of Robert B. Hoffman, Esq., for appellants, filed.	
Oct. 22	Appearance of David Ferleger, Esq., for appellees, Terri Lee Halderman, et al., filed.	

A TRUE COPY:

M. ELIZABETH FERGUSON,
Chief Deputy Clerk

Exhibit "B"

PILCOP

OCT 21 1980

LAW OFFICES OF
SWENSON & COHEN
SUITE 1500
275 SOUTH 10TH STREET
PHILADELPHIA, PA. 19103

(215) 735-3710

SANDRA SWENSON, Esquire
PAMELA PRYOR COHEN, Esquire

October 20, 1980

Clerk of the Court
U. S. District Court, Rm. 2609
United States Courthouse
601 Market St.
Phila., Pa. 19106

Re: Halderman v. Pennhurst
No. 74-1345

Dear Sir:

In accordance with the trial court's Order of July 14, 1980, enclosed for filing please find Exception to the Report of the Hearing Master in re proposed community placement of P.T.

Thank you.

Sincerely,

Pamela Cohen

PAMELA P. COHEN

PPC:lb
cc: P.T.
Mr. and Mrs. F.T.
Penelope Boyd, Esq.
Michael S. Lottman, Esq.
Carla S. Morgan
Dorothy J. Rowe
Dr. Russell Rice
P. Paul Burrichter
Patricia Jenkins, Esq.
Counsel for Plaintiffs & Intervenors
Robert Hoffman, Esq.
George Kopchick

LAW OFFICES OF
SWENSON & COHEN
SUITE 1500
275 SOUTH 19TH STREET
PHILADELPHIA, PA. 19103

SANDRA SWENSON, Esquire
PAMELA PRYOR COHEN, Esquire

(215) 735-8710

October 27, 1980

Clerk of the Court
U. S. District Court, Rm. 2609
United States Courthouse
601 Market St.
Phila., Pa. 19106

Re: Halderman v. Pennhurst
No. 74-1345

Dear Sir:

In accordance with the trial court's Order of July 14, 1980, enclosed for filing please find Exceptions to the Report of the Hearing Master in re proposed community placement of G. W.

Thank you.

Sincerely,

PAMELA P. COHEN

PPC:lb
cc: G. W.
Mr. R. W. and Mrs. C. Y.
David Ferleger, Esq.
Michael S. Lottman, Esq.
Carla S. Morgan
Dorothy J. Rowe
Dr. Russell Rice
Wm. McKendry
Counsel for Plaintiffs & Intervenors
Robert Hoffman, Esq.
George Kopchick

Exhibit "C"

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. A-1134

PENNHURST STATE SCHOOL AND HOSPITAL,	:	
SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, et al.,	:	
LOCAL AUTHORITIES OF BUCKS, CHESTER, DELAWARE, MONTGOMERY AND PHILADELPHIA COUNTIES, and	:	NOS. 79-1404
PENNHURST PARENTS-STAFF ASSOCIATION, INC.	:	79-1408
	:	79-1414
	:	79-1415
Petitioners	:	79-1489
v.	:	
TERRI LEE HALDERMAN, et al.,	:	
PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al., and	:	
UNITED STATES OF AMERICA	:	
Respondents	:	

RESPONSE OF THE PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al., TO APPLICATION FOR STAY

The belated Application for Stay by the Pennhurst Parents-Staff Association supported by Suburban Counties* misstates the facts of record in this case as well as the provisions and the purport of the Orders below, contradicts the Pennhurst Association's own averments below, addresses on the merits only the

* Commonwealth of Pennsylvania petitioners (No. 79-1404) have not joined in or supported this Stay Application. Commonwealth petitioners advise counsel for PARC et al. that they do not intend to do so.

two questions on which this Court had denied certiorari and shows no harm justifying a stay. Rather than maintain the status quo, the partial Stay sought would disrupt an orderly and integrated remedial process, as to which the chief party in interest apart from retarded people themselves, namely the Commonwealth, seeks no Stay.* For these and the following reasons, the Pennsylvania Association for Retarded Citizens et al. (the Association and four individual retarded people representative of the class certified below) submit, the Application for Partial Stay should be denied.

1. The Court of Appeals for the Third Circuit decided this case en banc on December 13, 1979. The Court of Appeals mandate issued on January 4, 1980. Between March 14, 1980 and March 20, 1980, petitions for certiorari were filed by the Commonwealth of Pennsylvania, the City of Philadelphia, four Suburban Counties, and the Pennhurst Association. On June 9, 1980, this Court denied certiorari as to two questions, granted certiorari as to other questions and itself specified one additional question.

Only now, on June 20, 1980--six months after decision below and more than five weeks after its stay request was denied in the Court of Appeals--does the Pennhurst Association seek a Stay in this Court, belying thereby any claim of irreparable injury pending review by the Court.

Applicant's stay request was denied by a unanimous Court of Appeals, on May 12, 1980, the nine members who decided the merits participating en banc. The Court of Appeals which unanimously denied the stay included the three

---

* The Orders Applicant seeks to stay are the orders of U.S. District Judge Raymond J. Broderick whose care and caution in these matters has been expressly remarked and approved by this Court in Secretary of Public Welfare v. Institutionalized Juveniles, 442 U.S. 640, 645 n. 7 (1979).

judges who had dissented to the Court's en banc Opinion on the merits. *

2. This Court on June 9, 1980, granted certiorari on certain questions concerning the meaning of the Developmentally Disabled Assistance and Bill of Rights Act of 1975, as amended, 42 U.S.C. §6010, and of the Pennsylvania Mental Health/Mental Retardation Act of 1966, 50 Purd. Stat. §4101, whether a private right of action arises under the former statute and the structure of remedy, and specified one additional question. ** The Court denied certiorari as to "Questions 3 presented in petitions Nos. 79-1404 and 79-1489." One of those questions concerned the standing and authority of the United States to intervene as a plaintiff below; the second, raised by the Pennhurst Association, concerned the certification below of the plaintiff class.

Nonetheless, in its Stay Application the Pennhurst Association merely references the statutes before the Court (Application, p. 4) and engages on argumentation as to their meaning or enforceability or a proper remedy under them. Instead the Application addresses the likelihood that petitioners' will succeed on the merits solely in terms of the two questions not before the Court, re-arguing at length*** the class question as to which certiorari was denied****
(Application at p. 2, pp. 5-7, pp10-13

---

* Suburban County petitioners sought no stay from the courts below and thus unable to move for a stay in this Court, merely support the Pennhurst Association's Application.

This Court, by Mr. Justice Brennan on July 24, 1979, and on October 1, 1979, as a whole, denied without dissent a previous stay application by the City of Philadelphia. 100 S. Ct. 28 (1979).

** Does 42 U.S.C. §1983 provide a private remedy to enforce the Developmentally Disabled Assistance and Bill of Rights Act.

*** As well as with little fidelity to the record below (see No. 3 below) and in fashion contradictory to its previous averments before the lower courts (see No. 3 below).

**** And as to which the Court of Appeals en banc was unanimous with no member dissenting on this question.

and p. 14) and rearguing the participation of the United States as a plaintiff below (Application, pp. 4-5). Far from being "the substantial issues" or "the pivotal question" (Application, p. 5) in this case, these matters are not before the Court at all.

3. The Pennhurst Association seeks in its Stay Application to secure from this Court relief which it failed to secure from the Pennsylvania Legislature and Governor Thornburgh, namely to stop community services for retarded people and thus to alter the status quo.

The Pennhurst Parents-Staff Association, Inc. has been a lead signatory to a state-wide full page ad campaign organized and paid for by the American Federation of State, County and Municipal Employees seeking to override a Governor's veto and enact legislation prohibiting the reduction of any institution's population by 5%, and any institution staff reduction of 5%, without specific legislative approval.* A copy of the bill and the AFSCME ad, in which one of the afliants to the Pennhurst Association's Stay Application is featured as chairperson are attached at Appendix A and B, respectively.** The campaign has failed in the state legislature.

---

* Pennsylvania's Secretary of Welfare, a defendant below and petitioner here, said of this campaign in a letter to the State Senator Dwyer:

> "The newspaper ads to which you refer in your letter are but one ingredient in a well-financed and self-serving campaign to protect some jobs, but at dire risk to the health of patients and significant expenses to the taxpayer. This is an unprecedented use of money, intimidation, and pressure politics to combat the Departments' responsible planning...."

Pa. D. P. W. Release No. 64 (May 20, 1980).

** It is of record in this case that AFSCME, District Council 88 has been paying the attorneys fees of the Pennhurst Association in this case. Deposition of AFSCME District Council Director (July 26, 1979), attached as Appendix 3. Substantial numbers of the members of the Pennhurst Parents-Staff Association are not parents but Pennhurst staff employees, members also of AFSCME. See Ashwander v. TVA, 297 U.S. 288 (1936)(Mr. Justice Brandeis, concurring).

The injury which Applicant seeks to avoid by a Stay is attributed by Applicant to the transfer of Pennhurst residents to community facilities. But such injury would arise in any event because such transfers will occur in any event, whether or not a Stay is granted. The Commonwealth has announced its intention to reduce the number of people at Pennhurst by 300 by transferring them to community facilities during fiscal years 1980-1982. Com. D.P.W., Mental Retardation Facilities: Five Year Plan, Vol. I, Sec. IA, p. 5. (March 1, 1980) (in evidence as Def. Ex. 4, May 27, 1980 proceedings in the District Court and attached hereto as Appendix D). The Commonwealth is going to transfer residents from Pennhurst anyway; that is the status quo. Thus the only difference a Stay would make would be to remove protections for the residents during such transfers, protections which two Courts have found necessary in order to avoid "dumping" retarded people into the community and in order to carry out their statutory rights. *

The Orders now in effect provide for an individual determination before any transfer from Pennhurst** and any determination allowing a transfer to community facilities is reviewable by the district court. Applicant's Appendix

---

* These protections include a written Individual Habilitation Plan formulated with the participation of the retarded person and his family as well as relevant professionals, assurance that needed services are in fact in place in accordance with the IHP before a person is transferred, and an opportunity to contest a proposed transfer on these grounds before it occurs. These and other protections are set forth in the Orders attached in Applicant's Appendix at pp. A2, A31, A32, A58-A62, A63-A73. All of these protections would be voided by a Stay, and all of them were constructed because a trial record showed these protections were consistently absent throughout ten years despite state and federal statutory requirements and averments by defendants that they would be provided.

Applicant's assertion that they are "being railroaded" (Application, p. 1) is a brutal and entirely incorrect characterization of the district court's Orders, as any reading of Judge Broderick's Orders will immediately show.

** The Hearing Master appointed to conduct individual determinations was for two years executive director of the American Bar Association's Commission on Mental Disability and for five years has been a member of the Willowbrook Review Panel, the court-appointed monitoring instrument in New York State Association for Retarded Children v. Carey.

p. A66. Since the district court's original orders in this case on March 17, 1978, no person has been transferred from Pennhurst to community living arrangements over the objection of his parents. In the unlikely event that the fears expressed by Applicant--all anticipatory, none realized--should materialize and someone is approved for transfer to unsuitable community facilities, the recourse for the person, a parent or any of the other several parties to the hearing is to the district court and failing there, to appeal. In the event Applicant hypothesizes, the remedy is with the district court, not in a Stay. Indeed, the granting of a Stay would leave retarded persons and their parents without this recourse and with no relief at all from the very event they say they fear.*

Applicants purport to seek to stay only those parts of the Orders which go to transfers to community facilities and those parts which require monitoring and oversight by a Special Master, purporting to leave in place those Orders which go to conditions within the institution. Such a partial Stay, however, would disrupt and dismantle a tested and refined remedial process, constructed by the Courts below with the participation of all parties, to monitor and protect retarded persons in the institution as well as those presently in community facilities. As the Stay Applicant itself said to the Courts below, although it eschews saying so to this Court,** and as the trial record of the institution over ten years shows, protections against abuse, violence and regression in the institution cannot be secured without the monitoring and the structuring provided for in the remainder of the Orders.

---

* The overbearing behavior of county case managers or certified advocates of which Applicant complains (Affidavits of Schlosser. Appl. App. p. B.11-B.13, of Caselina, Appl. App. p. B. 3) is, if true, ground for contempt of the district court orders. That is Applicant's remedy, not a Stay. Yet despite recurrent complaints of Applicant here and in its Affidavits for Stay before the Court of Appeals, Applicant has not moved for contempt or for any other sanction to end such asserted behavior.

** Applicant says very different, indeed contradictory, things to this Court from those said to the Court of Appeals when seeking a stay. To the Court of Appeals on April 29, 1980, Applicant said:

"There is no doubt that conditions at Pennhurst have been

(footnote continued)

Absent the protections of the Orders here retarded people will suffer grievous harm as the record shows and as the district court and the Court of Appeals have previously held in denying Stays heretofore. A stay at this point, when for the first time residents of Pennhurst have the benefit of mechanisms to protect their safety, health and life at Pennhurst and when a significant number of residents are about to go out from Pennhurst to community facilities either in the presence of the safeguards provided by the court's Orders or without them at demonstrated risk of injury, would irreparably harm plaintiffs.

The remedies ordered below track exactly, line by line, the Bill of Rights provisions of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U. S. C. §6010, and the Pennsylvania statute and its regulations. These

---

(footnote continued)

> markedly improved as a result of the District Court's Orders, the monitoring by the [Special Master] and the resulting increased scrutiny generally. These portions of the Court's Orders must remain in effect for an unknown period of time, as the montly reports of the [Special Master] indicate that ... Pennhurst remains deficient." (Emphasis supplied)

Applicant's Stay Motion and Memorandum to the Court of Appeals filed April 29, 1980, and denied by the Court of Appeals en banc May 12, 1980 were not supplied their appendicies. They are attached hereto as Appendix E.

Indeed in the proceedings before the District Court before the issuance of the April 24, 1980 Order, Applicant affirmatively commended to the District Court the necessity of a Master's oversight, there recommending exactly the "detailed monitoring and scrutiny" they decry in this Court (Application p. 9). For example, to the District Court, Applicant recommended:

> "The Special Master's Office shall review the finished Plan to ensure that the IHP Guidelines have been followed. [If they have not been] the Special Master shall return the Plan to the Planning Team for further planning in compliance with the Guidelines. Upon completion of the Plan, the Special Master shall direct and monitor defendants in the provision of facilities and services in accordance with the Plan."

Pennhurst Parents-Staff Association Proposed Order, page 4 (filed March 6, 1980).

remedies and appointment of the Special Master, which nearly every lower court finding violations in retardation institutions has found necessary to relief, should not be dispensed with prior to this Court's plenary consideration of this case and the statutes which govern it.

4. The Response of Suburban County petitioners filed Monday, June 23, 1980,* supporting Pennhurst Association's Stay Application also misstates the content and purport of the Orders it would stay.

First, Suburban Counties represent to the Court that "Suburban County Petitioners are the subject of an unqualified Order to provide CLA's and services without any provision for the resources to do so." Sub. Co. Response, p. 2. In fact, the District Court in its Opinion of May 8, 1979, entered after evidentiary hearing of Suburban Counties' motion asking the Court to revise Pennsylvania's retardation funding formulae and rejecting Suburban Counties' motion,** wrote:

> "[T]hree county defendants have requested this Court to order the Commonwealth to provide 100% of the money for the salaries of the case managers and case management supervisors, rather than the 90% which the Commonwealth presently agrees to provide. The Court finds that, at this time, resolution of this issue is not essential to the implementation of the Court's Order. The Commonwealth and county governments have the means to determine, within their respective authorities, the amounts which should be provided for this essential service to the retarded. The Court intends, however, to make certain that both the Commonwealth and county governments take all necessary steps to plan the future funding of case managers and case management supervisors, and the March 5 Order will be amended accordingly."

The district court did order on May 8, 1979, as to case managers, on June 8, 1979, as to CLA's, and on April 24, 1980, as to all expenses within the statutory formulae, that the funds provided the counties under Pennsylvania's statutory formulae must be provided in advance of any quarter, must reflect actual costs as Pennsylvania statute provides, and must be reviewed and adjusted quarterly. The

---

* The Stay Application was filed in the Court Friday, June 20, 1980. It was not served upon Respondents until late in the afternoon of Monday, June 23, 1980.

** Suburban Counties filed no appeal from the May 8, 1979 Order.

County Retardation Administrator for Montgomery County testified in hearings before the district court on June 4, 1979, as to the allocation provisions then embodied in the proposed June 8, 1979 Order:

> "This is the funding procedure which is really essential in the court order and I think it is a good setup, especially the quarterly review provision, which in effect would mandate us and the counties, as well as the Commonwealth, to make quarterly decisions on allocations as programs get fully implemented." Tr. pp. 231-32. *

Second, Suburban Counties represent (Sub. Co. Response, p. 3) that "there is no provision allowing county personnel, such as the County Administrator or the Case Manager having responsibility for the resident ... to contest the move or request a hearing." The district court's Order of April 24, 1980, establishing the individual determinations required by the Court of Appeals is directly and explicitly to the contrary. At paragraph 5, that Order provides:

> "The Pennhurst resident, parent/guardian, certified advocate, the Special Master, The County and The Commonwealth shall have the opportunity to present such evidence as the Hearing Master may find relevant to the issue of the resident's habilitation....
>
> "In the event the resident, parent/guardian, certified advocate, Special Master, County or Commonwealth takes exception to the Hearing Master's findings, said exception shall be filed with the Court within ten (10) days of the date the Hearing Master's report is filed with the Court." (Emphasis supplied)

Third, Suburban Counties assert (Sub. Co. Response, p. 4) that "sweeping language [of the Court's Orders] effectively transfers to the Special Master the direction and control of the mental retardation services delivery system of

---

* Suburban Counties, for no apparent reason, raise to this Court in their argument about funding, a pending contempt petition against one County Administrator. This petition has not yet been heard, let alone contempt found, and of course no appeal therefrom is pending, let alone before this Court.

Southeastern Pennsylvania." To the contrary, Judge Broderick's Orders do not remove or transfer any responsibility of any county or of the state but rather, at each point, the Orders sharpen and focus the county and state responsibilities and make clear they are theirs, responsibilities long since assigned by state and federal statute but as the trial record showed, responsibilities ignored, blunted, blurred and confused by county and state conduct over ten years. The Special Master's task is to monitor the performance of those responsibilities by county and state defendants (and of course that requires "every co-operation" of the counties, as the court ordered), a task the Court of Appeals upon plenary consideration of this case and review of the trial record upheld as proper and necessary, particularly since "after the decision on liability was announced, the appellants were afforded an opportunity to devise and present their own remedies for conditions at Pennhurst [and] they failed to do so." Slip Opinion, p. 57.

At this stage in this case, respondents PARC et al., submit, the Stay Application should be denied. The Court of Appeals en banc unanimously found "the conditions to which Pennhurst residents have been subjected" to be "abominable". Slip Op., p. 16. The three judges in dissent themselves found:

> "[T]he conditions at Pennhurst revealed in this record fall below a[ny] statutory or constitutional threshhold of decency so as to merit judicial intervention. The district court adequately documented the conditions at Pennhurst .... Understaffing, filth, violence, enforced inactivity and other horrors make Pennhurst, in the opinion of one well-traveled expert one of the worst institutions of its kind in the world. Under these circumstances the federal courts have a duty to intervene and to secure for Pennhurst's residents, at the very least, adequate living conditions.... I thus have no hesitation in agreeing that the federal judiciary should take the necessary steps to

eliminate those conditions." Slip Op., pp. 67-68 (citations only omitted).

Every judge of the Court of Appeals en banc, those in the dissent and those in the majority, joined in denying this Stay Application when it was presented to them. Until and unless this Court upon plenary consideration of this case finds it necessary and proper to modify, alter or vacate the remedial Orders entered below--if indeed it does not find the Orders and the remedy they embody required by federal and state statute--then, PARC et al., respectfully submit, these remedial Orders should not be dismantled piecemeal. Whatever open questions are before this Court, the remedial Orders below should not be dismantled until they have received the plenary consideration of this Court.

Respectfully submitted,

Thomas K. Gilhool, Esq.
Frank J. Laski, Esq.
Michael Churchill

16th Floor
1315 Walnut Street
Philadelphia, Pennsylvania 19107
(215) 735-7200

Counsel for Respondents
PARC et al.

June 24, 1980

Exhibit "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TERRI LEE HALDERMAN, et al.,	:	
	:	
Plaintiffs	:	
	:	CIVIL ACTION NO. 74-1345
v.	:	
	:	
PENNHURST STATE SCHOOL AND HOSPITAL, et al.,	:	
	:	
Defendants	:	

FILED
JUL 24 1980

COMMONWEALTH DEFENDANTS' BRIEF
REGARDING IMPLEMENTATION
OF STAY

This Court's Order of March 17, 1978, as modified by the judgment of the Court of Appeals on December 13, 1979, is the only order before the Supreme Court, both in the certiorari and stay proceedings. In staying that judgment "to the extent that the judgment mandates the movement of residents. . .to 'appropriate community living arrangements'", the Supreme Court acted broadly to enjoin the Court's control and supervision, pending final disposition, over the process of deinstitutionalization.

The March 17 Order has two distinct portions and purposes. First, ¶¶ 1-8 (including ¶¶ 5-8 regarding the Master) relate to and prescribe the process of deinstitutionalization. Although no specific paragraph requires the movement of any specific resident, the mandate of community placement is clearly established, subject only to further implementation orders. Second, ¶¶ 12-19 relate to the upgrading at Pennhurst. The

March 17 order serves as the basis for all subsequent implementation orders--Interim Operation of Pennhurst relating to the second portion of the order, all remaining orders relating to the deinstitutionalization.

The Supreme Court, in granting the stay, no doubt recognized the bifurcated nature of the order under review and acted appropriately. Indeed, stay was not even sought of portions of the March 17 order relating to Pennhurst, except insofar as they implicated the Master.[1] Rather, the focus was judicially mandated and controlled deinstitutionalization. The authority of the court to mandate that process is, of course, the crux of the certiorari petition, as the Court no doubt knew.

The Supreme Court could not address orders not before it.[2] Nor did it attempt to parse the judgment before it paragraph by paragraph. It stayed instead the process of deinstitutionalization, while permitting improvements at Pennhurst to go forward.

Finally, the Supreme Court did not, as the Court of Appeals had previously ordered, limit the stay to instances of involuntary movement. The order's express reference to "appropriate CLAs belies any such possibility.

1/ PARC's summary of the stay motion misstates this aspect of the relief sought. PARC memo at 4, ¶2. Likewise, PARC's "synopsis" of aspects of the motion "granted" and "denied" is not the factual recitation it purports to be, but argument, pure and simple.

2/ Ironically, the only provision PARC deemed stayed - Section 5, ¶ 4-5 of the April 24 order--were not before the Court. Memo at 2. Thus, PARC would interpret the stay as meaningless.

In s. rt, the stay is directly, squarely and broadly aimed at this Court's authority to mandate and control the process of community placement. The Court may neither direct placement nor control its form and process. The only portions of the April 24, 1980 order surviving the stay are:

a. Part I, ¶¶ 11-19 regarding Pennhurst, ¶¶ 5, 7-8 regarding the master insofar as related to Pennhurst activities and ¶ 20; and

b. Part II, ¶¶ 1.0-6.0.

2. This does not mean the placement process will grind to a halt, the spectre raised by some plaintiffs at hearing. Rather, it will move ahead under the jurisdiction of Commonwealth and county officials.

As PARC Exhibit 2 recounts, Commonwealth officials sought promptly after issuance of the stay to insure that placement efforts continued. Acting prior to this Court's July 14 order, the Commonwealth directed the counties to proceed with planning for movement of the school-age children; announced future placement planning; and established a procedure for finalization of the IHP guidelines. A meeting with county officials to formalize these announcements was scheduled for July 17, only to be cancelled in the wake of this Court's order and hearing. That process will continue through-

out the period pending final Supreme Court review.[3]

ROBERT B. HOFFMAN
Deputy Attorney General

ALLEN C. WARSHAW
Deputy Attorney General
Chief, Civil Litigation

HARVEY BARTLE, III
Acting Attorney General

Pa. Dept. of Justice
16th Fl., Strawberry Sq.
Harrisburg, PA 17120
(717) 783-1471

3/ The trial testimony did not establish that habilitation in Pennsylvania's CLAs was lacking in any respect. The evidence consistent with plaintiffs' trial strategy was quite the contrary. The outstanding credentials of Dr. Howse and her staff is of record.

Exhibit "E"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
HARRISBURG, PENNSYLVANIA 17120

OFFICE OF MENTAL RETARDATION
JENNIFER L. HOWSE, Ph.D.
DEPUTY SECRETARY

TELEPHONE
AREA CODE 717 787-3700

August 19, 1980

Patricia C. Sweigert, Administrator
BUCKS COUNTY DEPT. OF MH/MR
Neshaminy Manor Center
Doylestown, PA 18901

Dear Ms. Sweigert:

As you are aware, I elected to cancel our meeting originally scheduled for July 17, 1980 in light of the issuance of new court orders on July 14, 1980. I would like to reschedule that meeting on Thursday, August 28, 1980 at 10:00 A.M. at the Philadelphia County MH/MR Office.

At that time, I will outline my recommended direction regarding placement of plaintiff class members. Additionally, I will ask for agreement between the Commonwealth and the counties as to how to proceed with the placement of the school-age children. Further, the Commonwealth, as a second priority, is committed to the placement of an additional 65 clients from Pennhurst in order to bring the staffing ratios at Pennhurst into compliance with the staffing study submitted to the Court in July, 1980. Finally, I would like to suggest for your comment, proposed steps for future planning and development of community living arrangements for other plaintiff class members still at Pennhurst, Embreeville, Woodhaven and within the community.

I hope this meeting will help to accomplish a unified strategy and identification of priorities for meeting the needs of plaintiff class members. Your continued support and effort to meet our mutual goals is critical. I am looking forward to our meeting.

Sincerely,

Jennifer L. Howse, Ph.D.

cc: Helen B. O'Bannon
Russell G. Rice, Jr., Ed.D.
George A. Kopchick, Jr.

Exhibit "F"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
HARRISBURG, PENNSYLVANIA 17120

OFFICE OF MENTAL RETARDATION
JENNIFER L. HOWSE, PH.D.
DEPUTY SECRETARY

TELEPHONE
AREA CODE 717. 787-3700

October 8, 1980

RECEIVED
OCT 10 1980
MH/MR

William A. McKendry, Administrator
CHESTER COUNTY MH/MR PROGRAM
24 South New Street
West Chester, PA 19380

Dear Bill:

I am writing to follow-up on our meeting held on August 21st at which time, we discussed the impact of this year's allocation on the placement projections of sixty-five (65) Pennhurst adults.

As part of our planning effort, I am requesting that you provide the following information: 1) the number of Pennhurst adults your county agrees to place in CLA's by June 30, 1980; 2) the names of the clients if identified; 3) the estimated costs (per diem) for providing CLA's to the above number of clients through June 30, 1980; 4) the anticipated start-up costs for the development of these CLA's; and 5) timeframes anticipated for implementing these programs. Additionally, please provide similar information for the County's projections on placement of identified community clients in need of CLA placements. Please submit the above information to my office and the Regional Office no later than October 31, 1980.

The Office of Mental Retardation is anxious to provide assistance to the counties to facilitate the placement of Pennhurst clients. The information requested above, upon review, may impact upon the current year's allocation, in that additional resources may be identified, if appropriate.

I am hopeful that the Office of Mental Retardation and the counties can establish a joint strategy for the continued placement of Pennhurst residents to achieve our mutual goal of deinstitutionalization. Your continued support and effort is appreciated.

Sincerely,

Jennifer L. Howse, Ph.D.

cc: George A. Kopchick, Jr.
Dorothy J. Rowe
Russell G. Rice, Jr., Ed.D.
Karen F. Snider

Exhibit "G"

STATE CENTERS

COST COMPARISONS

(Annual Costs in Thousands)

	ACTUAL COSTS				PROJECTED COSTS AT CURRENT RESIDENT LEVELS											
	1974-1975		1978-1979		1979-1980		1980-1981		1981-1982		1982-1983		1983-1984		1984-1985	
Facility	Annual	Per Diem	Annual	Per Diem	Annual	Per Diem	Annual	Per Diem	Annual	Per Diem	Annual	Per Diem	Annual	Per Diem	Annual	Per Diem
Cresson	8,572	54.55	10,141	92.45	11,412	113.70	11,973	119.29	12,967	129.19	14,046	139.94	15,214	151.58	16,480	164.19
Ebensburg	13,837	41.93	18,021	63.48	20,199	74.79	22,234	87.65	24,072	117.77	26,061	129.35	28,216	139.67	30,552	151.64
Hamburg	9,950	35.39	14,019	59.60	16,783	79.28	17,408	84.57	18,851	109.42	20,414	146.03	22,108	157.72	23,944	171.28
Laurelton	7,386	46.43	9,590	90.76	11,216	113.81	11,701	94.29	12,676	98.11	13,733	106.29	14,877	114.83	16,120	124.76
Marcy	1,873	74.98	5,481	90.58	6,139	80.10	6,416	73.86	6,956	67.35	7,541	73.01	8,175	78.93	8,865	85.83
Pennhurst	28,046	40.21	40,288	70.13	52,213	135.08	38,345*	134.00	41,556	226.80	45,038	489.65	48,815	530.72	52,911	575.25
Polk	28,530	33.71	47,239	76.10	52,418	89.09	47,292*	107.98	51,208	144.34	55,451	173.63	60,049	202.56	65,030	237.56
Selinsgrove	18,319	34.91	26,184	62.26	29,381	73.18	32,535	95.13	35,225	115.72	38,138	139.14	41,294	164.71	44,712	200.82
Woodhaven	5,979	141.98	13,030	144.31	15,826	160.59	16,470	165.90	18,085	182.17	19,859	200.03	21,807	219.06	23,947	241.21
Western	11,053	49.20	14,597	86.54	16,340	99.49	16,857	120.90	18,263	135.24	19,786	142.66	21,439	154.15	23,231	167.49
White Haven	12,948	41.91	17,214	66.15	19,733	78.36	21,055	94.72	22,791	132.01	24,672	146.95	26,708	158.64	28,914	188.61
Embreeville HR					7,994	73.01	13,598	124.19	14,724	115.26	15,942	121.33	17,264	117.93	18,694	129.05
TOTAL	146,493		215,804		259,654		255,884		277,374		300,681		325,966		353,400	

* No contracts.

Exhibit "H"

MR ATTACHMENT I

COUNTY: BUCKS

PRIMARY MENTAL RETARDATION
COMMUNITY SERVICES ALLOCATION FOR THE 1980-81 FY

The below-listed General (Non-Categorical) MR amount includes sufficient monies $166,452 to enable the County (or County Joinder) to continue full operation (i.e. without service reduction) of existing Early Intervention programs. In addition, the General MR amount must be used to fund continuation of Child Day Care Services formerly funded during the 1978-79 fiscal year with the Title XX monies (as outlined in County MH/MR Memorandum #55).

General (Non-Categorical) MR	$ 858,822	Non-categorical	(90%)
Family Resource Services	$ 216,709	Categorical	(90%)
Case Management/CLA and/or Pennhurst	$ 130,659	Categorical	(90%)
Special Vocational Services (CLA and/or Pennhurst)	$ 946,500	* Categorical	(100%)
Community Living Arrangements			
(A) for 102 operational CLA slots	$ 1,790,481	Categorical	(100%)
with 0 of these slots reserved for Pennhurst children.	$ -0-	Categorical	(100%)
(B) for 15 new CLA slots **	$ 217,400	Categorical	(100%)
GRAND TOTAL	$ 4,160,571		

*The only exception to the 100% categorical for Special Vocational Services is $495,000 in 4th+ years funding which is 90% categorical. Funding amounts for the other three years are as follows: 1stYr. $1,500; 2ndYr. -0-; 3rdYr. $450,000.

**Number of persons transferring into new CLA slots from the following institutions:

9 Pennhurst	1 Hamburg	1 Ebensburg
White Haven	Western	Selinsgrove

County-Specific Comments:

(1) As stated in the main body of this Primary Allocation letter, interim care amounts will be announced by the end of August 1980.

MR ATTACHMENT I

COUNTY: CHESTER

PRIMARY MENTAL RETARDATION
COMMUNITY SERVICES ALLOCATION FOR THE 1980-81 FY

The below-listed General (Non-Categorical) MR amount includes sufficient monies $455,097 to enable the County (or County Joinder) to continue full operation (i.e. without service reduction) of existing Early Intervention programs. In addition, the General MR amount must be used to fund continuation of Child Day Care Services formerly funded during the 1978-79 fiscal year with the Title XX monies (as outlined in County MH/MR Memorandum #55).

General (Non-Categorical) MR	$ 911,321	Non-categorical	(90%)
Family Resource Services	$ 145,179	Categorical	(90%)
Case Management/CLA and/or Pennhurst	$ 93,177	Categorical	(90%)
Special Vocational Services (CLA and/or Pennhurst)	$ 453,000 *	Categorical	(100%)
Community Living Arrangements			
(A) for 107 operational CLA slots	$ 1,643,158	Categorical	(100%)
with 9 of these slots reserved for Pennhurst children.	($ 357,824)	Categorical	(100%)
(B) for 21 new CLA slots **	$ 305,210	Categorical	(100%)
GRAND TOTAL	$ 3,551,045		

*The only exception to the 100% categorical for Special Vocational Services is $ 450,000 in 4th+ years funding which is 90% categorical. Funding amounts for the other three years are as follows: 1stYr. $3,000; 2ndYr. -0-; 3rdYr. -0-.

**Number of persons transferring into new CLA slots from the following institutions:

12 Pennhurst	4 Hamburg	1 Ebensburg
White Haven	Western	Selinsgrove

County-Specific Comments:

(1) As stated in the main body of this Primary Allocation letter, interim care amounts will be announced by the end of August 1980.

MR ATTACHMENT I

COUNTY: DELAWARE

PRIMARY MENTAL RETARDATION
COMMUNITY SERVICES ALLOCATION FOR THE 1980-81 FY

The below-listed General (Non-Categorical) MR amount includes sufficient monies $114,314 to enable the County (or County Joinder) to continue full operation (i.e. without service reduction) of existing Early Intervention programs. In addition, the General MR amount must be used to fund continuation of Child Day Care Services formerly funded during the 1978-79 fiscal year with the Title XX monies (as outlined in County MH/MR Memorandum #55).

General (Non-Categorical) MR	$ 869,801	Non-categorical	(90%)
Family Resource Services	$ 191,011	Categorical	(90%)
Case Management/CLA and/or Pennhurst	$ 105,332	Categorical	(90%)
Special Vocational Services (CLA and/or Pennhurst)	$ 79,056	* Categorical	(100%)
Community Living Arrangements			
(A) for 113 operational CLA slots	$ 2,251,551	Categorical	(100%)
with 18 of these slots reserved for Pennhurst children.	($ 735,469)	Categorical	(100%)
(B) for 15 new CLA slots **	$ 217,400	Categorical	(100%)
GRAND TOTAL	$ 3,714,151		

*The only exception to the 100% categorical for Special Vocational Services is $ -0- in 4th+ years funding which is 90% categorical. Funding amounts for the other three years are as follows: 1stYr. -0-; 2ndYr. $79,056; 3rdYr. -0-.

**Number of persons transferring into new CLA slots from the following institutions:

9 Pennhurst	1 Hamburg	1 Ebensburg
White Haven	Western	Selinsgrove

County-Specific Comments:

(1) As stated in the main body of this Primary Allocation letter, interim care amounts will be announced by the end of August 1980.

MR ATTACHMENT I

COUNTY: MONTGOMERY

PRIMARY MENTAL RETARDATION
COMMUNITY SERVICES ALLOCATION FOR THE 1980-81 FY

The below-listed General (Non-Categorical) MR amount includes sufficient monies $283,645 to enable the County (or County Joinder) to continue full operation (i.e. without service reduction) of existing Early Intervention programs. In addition, the General MR amount must be used to fund continuation of Child Day Care Services formerly funded during the 1978-79 fiscal year with the Title XX monies (as outlined in County MH/MR Memorandum #55).

General (Non-Categorical) MR	$ 738,819	Non-categorical	(90%)
Family Resource Services	$ 239,227	Categorical	(90%)
Case Management/CLA and/or Pennhurst	$ 132,889	Categorical	(90%)
Special Vocational Services (CLA and/or Pennhurst)	$ 1,981,020	* Categorical	(100%)
Community Living Arrangements			
(A) for 261 operational CLA slots	$ 4,377,321	Categorical	(100%)
with 21 of these slots reserved for Pennhurst children.	($ 617,155)	Categorical	(100%)
(B) for 27 new CLA slots **	$ 387,179	Categorical	(100%)
GRAND TOTAL	$ 7,856,955		

*The only exception to the 100% categorical for Special Vocational Services is $ 1,125,020 in 4th+ years funding which is 90% categorical. Funding amounts for the other three years are as follows: 1stYr. $6,000; 2ndYr. $275,000; 3rdYr. 575,000.

**Number of persons transferring into new CLA slots from the following institutions:

16 Pennhurst	3 Hamburg	3 Ebensburg
White Haven	Western	Selinsgrove

County-Specific Comments:

(1) As stated in the main body of this Primary Allocation letter, interim care amounts will be announced by the end of August 1980.

Received 9:05 8-21-80
via Telecopier

ATTACHMENT 1

CITY: Philadelphia

PRIMARY MENTAL RETARDATION
COMMUNITY SERVICES ALLOCATION FOR THE 1980-81 FY

The below-listed General (Non-Categorical) MR amount includes sufficient
tax $239,269 to enable the County (or County delegate) to continue full
ration (i.e. without service reduction) of existing Early Intervention programs.
addition, based on 10% of the 1966 Mental Health/Mental Retardation Act, $3,957,600
Categorical Special Needs/Early Intervention monies has been allocated to Philadelphia
nty for the 1980-81 fiscal year. This will include 100% funding for children enrolled
or to 7/1/80 and 90% funding for children enrolled afterwards.

eral (Non-Categorical) MR	$ 3,973,117	Non-categorical	(90%)
mily Resource Services	$ 440,316	Categorical	(90%)
se Management/CLA and/or Pennhurst	$ 396,419	Categorical	(90%)
ecial Vocational Services (CLA and/or Pennhurst)	$ 2,400,464 *	Categorical	(100%)
mmunity Living Arrangements			
(A) for 302 operational CLA slots with 25 of those slots reserved for Pennhurst children.	$5,825,349 ($ 800,685)	Categorical Categorical	(100%) (100%)
(B) for 33 new CLA slots **	$ 473,219	Categorical	(100%)
GRAND TOTAL	$13,308,884		
	+ 3,957,660		
	17,266,484		

*The only exception to the 100% categorical for Special Vocational Services is $1,114,260 in 4th+ years funding which is 90% categorical. Funding amounts for the other three years are as follows: 1st Yr. $888,260; 2nd Yr. 0; 3rd Yr. $979,951.

These figures revised

**Number of persons transferring into new CLA slots from the following institutions:

19 Pennhurst	4 Harburg	2 Ebensburg
White Haven	Western	Selinsgrove

County-Specific Comments:

(1) As stated in the main body of this Primary Allocation letter, interim care amounts will be announced by the end of August 1980.

(2) The General (non-categorical) MR amount reflects a $200,000 reduction from the tentatively allocated funding level. The Department has taken this step because the $200,000 in question was legislatively appropriated to Philadelphia ARC to provide MR services to residents of Philadelphia County.

Exhibit "I"

PENNHURST STUDY
BRIEF REPORT #1

DEVELOPMENT OF SEVENTEEN FORMER PENNHURST RESIDENTS WHO ARE NOW IN COMMUNITY LIVING ARRANGEMENTS IN MONTGOMERY COUNTY

BY:

JAMES W. CONROY
JAMES A. LEMANOWICZ
LESLIE SOKOL
MATTHEW POLLACK

Evaluation & Research Group
Temple University Developmental Disabilities Center
9th Floor Ritter Annex
Philadelphia, PA 19122
(215-787-1356)

DATE: October 16, 1980

INTRODUCTION

The Evaluation & Research Group collected a Behavior Development Survey (BDS) for every resident of Pennhurst Center in September, 1978. Since that date, 17 clients have been relocated to small community settings in Montgomery County. In October, 1980, the Evaluation & Research Group collected a second Behavior Development Survey (BDS) at the community residences of each of the 17 clients.

This Brief Report describes the current adaptive functioning status of the 17 clients as compared to their status while at Pennhurst. We do not generalize findings from these 17 people to any other people, nor do we know the "causes" of the changes in adaptive functioning.

FINDINGS 1: GROWTH

The BDS is usually analyzed in terms of three adaptive skill areas. Personal Self-Sufficiency is the sum of scores on 10 items (e.g., body balance, self-care at toilet, use of table utensils); Community Self-Sufficiency is made up of 14 items (e.g., food preparation, complex instruction, money handling, room cleaning); Personal-Social Responsibility has 7 items (e.g., care of clothing, interaction with others, initiative).

In the table below, we present the range of each subscale, the mean score of the 17 clients when they were at Pennhurst, and their mean score now, two years later, in community settings.

SKILL AREA	RANGE	MEAN SCORE AT PENNHURST	MEAN SCORE IN COMMUNITY	CHANGE
Personal Self-Sufficiency	0-47	32.2	38.0	+5.8
Community Self-Sufficiency	0-51	13.4	19.2	+5.8
Personal-Social Responsibility	0-26	10.6	15.2	+4.6
Total BDS	0-124	56.2	72.4	+16.2

Although each of these changes is statistically significant beyond the .01 level, such significance are meaningless because we do not intend to generalize to, or make inferences about, other clients. We must focus on practical significance here. In this case, a gain of 16 total points is obviously large for a scale with only 124 points.

In fact, 16 of the 17 clients have gained in adaptive skills, as displayed below:

1	client	lost	6	BDS	points
2	clients	gained	6	BDS	points
1	"	"	7	"	"
3	"	"	10	"	"
1	"	"	15	"	"
3	"	"	18	"	"
1	"	"	19	"	"
1	"	"	20	"	"
1	"	"	21	"	"
1	"	"	26	"	"
1	"	"	33	"	"
1	"	"	45	"	"

FINDINGS 2: CLIENTS

These 17 clients were not mildly retarded. In fact, one was "moderately" retarded, 10 severe, and 6 profound. Three had some difficulty with vision, one had a mild hearing problem, three were non-ambulatory and two more had difficulty walking.

They had been at Pennhurst an average of 22.1 years (minimum three, maximum 47) at the time of their release; they are now 36.9 years old on the average (minimum 15, maximum 63). They have been in the community a median of 12 months (minimum five, maximum 29 months), meaning that half have been out longer, and half shorter, than 12 months.

FINDINGS 3: CORRELATES OF GROWTH

Is level of retardation related to growth among these 17 people? The

one moderately retarded client gained 28 BDS points, the 10 severely retarded clients gained an average of 14.2 points, and the 6 profoundly retarded clients gained an average of 18.0 points. There is no clear pattern.

Is the length of time in residence at Pennhurst related to growth when placed in the community? Clients who had been at Pennhurst one to nine years, and there were six of them, gained 21.7 points. The five clients who had been at Pennhurst 10 to 29 years gained 10.0, and the six who had been at Pennhurst over 30 years gained 16.0 points. Apparently, there is some slight tendency (among these clients - please do not generalize) for those who had been at Pennhurst for a short or for a very long time to gain more.

Is age related to growth? A similar pattern appeared:

Age 1-21	N=4	Average gain = 25.5
Age 22-39	N=6	Average gain = 7.5
Age 40 plus	N=7	Average gain = 18.4

The youngest and the oldest benefited most.